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 PA/HO Department of State
 E.O. 12958, as amended
 July 12, 2005

APR 23 1969

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MEMORANDUM

TO : J. - The Under Secretary for Political Affairs

THROUGH: S/S

FROM: EUR - Martin J. Hillenbrand

SUBJECT: Law of the Sea: Recent Canadian Announcement
 on Baselines and Fisheries Closing Lines -
 ACTION MEMORANDUM

On April 5, the Canadian Government announced that it will shortly establish further headland to headland baselines defining Canada's internal waters, territorial sea, and exclusive fishing zones on both east and west coasts. At the same time the Canadian Government proposes to amend the legislation under which baselines are drawn to permit the drawing of "fisheries closing lines," enclosing exclusive fishing zones without affecting the limits of Canada's internal waters or territorial sea. Embassy Ottawa was only given a few hours advance notice of this announcement.

BACKGROUND
 Since 1964 when Canada passed legislation authorizing the Government to draw straight baselines from headland to headland closing off parts of the high seas as internal Canadian waters, we have been trying to make clear to the Canadian Government that we could not accept such action on its part in certain broad areas of the high seas. The Department of Defense has taken the United States hoped Canada would not draw

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 By *MW* NARA Date *7/17/96*

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the position that implementation of the 1964 Canadian baseline statute "would create serious security problems for the United States." (A copy of a letter dated January 13, 1969, from DOD to then Under Secretary Rostow setting forth this position is attached at Tab A.)

A first list of geographical coordinates for baselines was issued in 1967, establishing straight baselines for the coast of Labrador and the south and east coasts of Newfoundland. At the time of this action we gave Canadian Ambassador Ritchie a note dated November 1, 1967 (attached at Tab B) stating that we considered the Canadian action to be without legal justification and that it was the view of the U.S. that the baselines were, in important and substantial respect, contrary to established principles of the international law of the sea. We also informed Ambassador Ritchie that the U.S. did not recognize the validity of the purported lines and reserved all rights of the United States and its nationals in the waters in question.

Last fall, in response to statements in Parliament by the Canadian Minister of Fisheries regarding additional baselines, we called in Canadian Counselor Burwash on November 4 and told her that we wished to make it crystal clear that the U.S. position on baselines set forth in the note given to Ambassador Ritchie on November 1, 1967 had not changed. We also told Miss Burwash that the U.S. continued to consider baselines contrary to established principles of the international law of the sea and, for this reason, the United States hoped Canada would not draw

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additional baselines as suggested by its Minister of Fisheries. In addition we told Miss Burwash that if, despite the U.S. position, Canada did decide to draw additional baselines, we hoped we would be consulted in advance of any such decision and given an opportunity to comment on them well before their announcement.

April 5 Announcement

The Canadian announcement on April 5 (attached at Tab C) states that further baselines will now be drawn on the east coast of Nova Scotia and along the west coasts of Vancouver Islands and the Queen Charlotte Islands. In making this announcement the Canadian Minister of Fisheries emphasized important exceptions, saying: "I am thinking particularly of the Gulf of St. Lawrence. In this case, where it may not be desirable to close off all of the Gulf as internal waters, we can still make it an exclusive fishing zone." (The text of the statement is attached at Tab D.) This would be done by amending Canadian baselines legislation to provide for fisheries closing lines enclosing exclusive fishing zones. Canada would then negotiate the phasing out of "traditional fishing practices" of other countries within the waters enclosed.

The Canadian announcement on April 5 contained no coordinates or other specific data for baselines or fisheries closing lines. While legislation for fisheries closing lines will require Parliamentary action, the Canadian Minister of Fisheries has indicated that he intends to move rapidly with respect to the establishment of baselines,

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particularly along the east coast of Nova Scotia. This can be done by order in council and requires no new legislation. The Canadian Minister of External Affairs has told Embassy Ottawa that the baselines to be drawn pursuant to the April 5 announcement will be in "non-controversial" areas and will be virtually identical with baselines which have already been discussed with the United States.

Multilateral Aspects

Canada is not a signatory to the Geneva law of the sea convention.

We have negotiated with the Soviets an ad referendum multilateral draft Convention of the Territorial Sea (Tab E), containing compromise provisions with respect to preferential fishing rights of coastal states on the high seas beyond 12 miles. The Soviets wish to convene as soon as possible an international conference on the law of the sea. Both Canada and the United States have taken the position that progress in resolving the territorial sea issue is likely to depend on working out a generally acceptable agreement on fishing rights for adoption at the conference proposed by the Soviets. Both governments have been reluctant to agree to the Soviet initiative, therefore, until draft provisions for an agreement on coastal fishing rights can be worked out and gain widespread acceptance, believing that failure to do so would doom the conference itself. The United States is also concerned that such a failure could, in turn, lead to further extension of claims over territorial seas.

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We also recognize the urgency of working out a multilateral agreement on coastal fishing rights to stop the unilateral extension of such rights.

The fishing provisions of the ad referendum multilateral draft convention we have worked out with the Soviets are strongly opposed by Canada as not giving coastal states enough fishing preference. Several distant water states, such as Great Britain, have opposed them for opposite reasons. We hope the provisions will gain more wide-spread acceptance among our allies as a result of consultation at the end of the month in NATO. We are not sure whether the April 5 Canadian announcement will help or hinder our efforts in this regard.

RECOMMENDATION

That you call in Canadian Ambassador Ritchie as soon as possible and give him the attached note (Tab F) on the Canadian Government's April 5 announcement.

APPROVE 4/25/69 12:00
NOON

DISAPPROVE _____

Clearance: EUR/CAN - Mr. Scott *MS*
L - Mr. Belman (draft) *MS*
S/FW - Mr. Blow *MS*
EUR - Mr. Springsteen *MS*

EUR/CAN:JCG:iffith:sc
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to the Note